

SHB 1608 - S COMM AMD

By Committee on Agriculture & Rural Economic Development

ADOPTED 04/07/2005

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The production of potatoes within this  
4 state is in the public interest. It is vital to the continued economic  
5 well-being of the citizens of this state and their general welfare that  
6 its potato industry be encouraged by enabling producers of potatoes to  
7 help themselves in establishing orderly, fair, sound, efficient, and  
8 unhampered marketing, trade, grading, and standardization of the  
9 potatoes they produce.

10 (2) It is in the public interest that support for the potato  
11 industry be clearly expressed, that adequate protection be given to the  
12 industry, and that the industry's collective activities and operations  
13 include:

14 (a) Enhancing the reputation and image of Washington state's  
15 potatoes and potato producers;

16 (b) Working to eliminate or limit impediments affecting the sale  
17 and use of Washington state's potatoes in local, domestic, and foreign  
18 markets;

19 (c) Protecting the public by educating the public in reference to  
20 the quality, care, and methods used in the production of Washington  
21 state's potatoes;

22 (d) Increasing the public knowledge of nutritional value, health-  
23 giving qualities, and dietetic value of Washington state's potatoes and  
24 products; and

25 (e) Supporting and engaging in programs or activities that benefit  
26 the planting, production, harvesting, handling, processing,  
27 transportation, trade, and use of potatoes produced in Washington  
28 state.

1        NEW SECTION.    **Sec. 2.**    The definitions in this section apply  
2 throughout this chapter unless the context clearly requires otherwise.  
3        (1) "Affected area" or "area of production" are synonymous and mean  
4 the state of Washington.  
5        (2) "Affected handler" means any handler of potatoes who is subject  
6 to this chapter.  
7        (3) "Affected producer" means any producer who is subject to this  
8 chapter.  
9        (4) "Assessment" means the monetary amount established in this  
10 chapter that is to be paid by each affected producer to the commission  
11 in accordance with the schedule established in this chapter.  
12        (5) "Commercial quantities" means and includes five hundredweight  
13 or more.  
14        (6) "Commission" means the potato commission established in this  
15 chapter.  
16        (7) "Department" means the department of agriculture of the state  
17 of Washington.  
18        (8) "Director" means the director of agriculture of the state of  
19 Washington or any qualified person or persons designated by the  
20 director of agriculture to act for him or her concerning some matter  
21 under this chapter.  
22        (9) "District" means the geographical divisions of the area of  
23 potato production established under this chapter.  
24        (10) "Fiscal year" means the twelve-month period beginning July 1st  
25 of any year.  
26        (11) "Handler" means any person who acts, either as principal,  
27 agent, or otherwise, in the processing, packing, shipping, selling, or  
28 distributing of potatoes that are not produced by the handler.  
29 "Handler" does not include a common carrier used to transport an  
30 agricultural commodity. "To handle" means to act as a handler.  
31        (12) "Hosting" includes providing meals, refreshments, lodging,  
32 transportation, gifts of nominal value, reasonable and customary  
33 entertainment, and normal incidental expenses at meetings or  
34 gatherings.  
35        (13) "Hundredweight" or "affected unit" are synonymous and mean  
36 each one hundred pound unit or any combination of packages making a one  
37 hundred pound unit of potatoes.

1 (14) "Mail" or "send," for purposes of any notice relating to rule  
2 making, referenda, or elections, means regular mail or electronic  
3 distribution, as provided in RCW 34.05.260 for rule making. For the  
4 purposes of this definition, "electronic distribution" or  
5 "electronically" means distribution by electronic mail or facsimile  
6 mail.

7 (15) "Person" includes any individual, firm, corporation, limited  
8 liability company, trust, association, partnership, society, or any  
9 other organization of individuals or any unit or agency of local or  
10 state government.

11 (16) "Potatoes" means and includes all kinds and varieties of Irish  
12 potatoes grown in the state of Washington and marketed, sold, or  
13 intended for use for human consumption.

14 (17) "Producer" means any person who is engaged in the production  
15 for market of potatoes in commercial quantities and who has a  
16 proprietary interest in the potatoes grown in the state of Washington.  
17 For purposes of this chapter, "producer" includes a landowner,  
18 landlord, tenant, or other person who participates in the growing or  
19 producing of potatoes. "To produce" means to act as a producer.

20 (18) "Referendum" means a vote by the affected parties or affected  
21 producers that is conducted by secret ballot.

22 (19) "Sale" means a transaction wherein the property in or to  
23 potatoes is transferred from the producer to a purchaser for  
24 consideration. "Sale" includes an agreement to acquire such property  
25 for a consideration.

26 (20) "Trade relations hosting" means the hosting of individuals and  
27 groups of individuals at meetings, meals, and gatherings for the  
28 purpose of cultivating trade relations for Washington state potatoes  
29 and potato products.

30 (21) "Unfair trade practice" means any practice that is unlawful or  
31 prohibited under the laws of the state of Washington including but not  
32 limited to Titles 15, 16, and 69 RCW and chapters 9.16, 19.77, 19.80,  
33 19.84, and 19.83 RCW, or any practice, whether concerning interstate or  
34 intrastate commerce that is unlawful under the federal trade commission  
35 act of 1914, as amended (38 Stat. 719; 15 U.S.C. Sec. 41 et seq.) or  
36 the violation of or failure accurately to label as to grades and  
37 standards in accordance with any lawfully established grades or  
38 standards or labels.

1 (22) "Vacancy" means that a commission member leaves or is removed  
2 from a position on the commission before the end of a term, or a  
3 nomination process for the beginning of a term concludes with no  
4 candidates for a position.

5 NEW SECTION. **Sec. 3.** (1) The potato commission is hereby  
6 established to administer this chapter. Commission members must be  
7 citizens and residents of Washington and at least eighteen years of  
8 age. The commission shall be composed of fifteen members, nine of whom  
9 shall be producers elected from districts as provided in subsections  
10 (2) and (3) of this section, five who are appointed by the elected  
11 producer members as provided in subsection (4) of this section, and one  
12 member appointed by the director from the department to represent the  
13 director as a voting member.

14 (2) For the purpose of nomination and selection of producer members  
15 of the commission, the affected area of the state of Washington shall  
16 be divided into three representative districts as provided in this  
17 subsection.

18 (a) District 1 is the counties of Douglas, Chelan, Okanogan, Grant,  
19 Adams, Lincoln, Ferry, Stevens, Pend Oreille, Spokane, and Whitman.

20 (b) District 2 is the counties of Kittitas, Yakima, Klickitat,  
21 Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

22 (c) District 3 is the counties of Skagit, Whatcom, and all other  
23 counties not named in (a) or (b) of this subsection.

24 (3) Producer members shall be elected from the districts as  
25 follows:

26 (a) Positions 1, 2, 3, and 4 shall be elected from district 1;

27 (b) Positions 5, 6, 7, and 8 shall be elected from district 2; and

28 (c) Position 9 shall be elected from district 3.

29 (4)(a) Positions 10, 11, 12, 13, and 14 shall be appointed by the  
30 elected producers as provided in subsections (1) and (5)(b) of this  
31 section.

32 (b) Position 15 shall be appointed by the director as provided in  
33 subsection (1) of this section.

34 (5)(a) Producer members of the commission shall be producers of  
35 potatoes in the district in and for which they are nominated and  
36 elected. The producer members shall be and have been actively engaged  
37 in producing the potatoes in this state for a period of at least three

1 years, and shall derive a substantial proportion of their incomes from  
2 the sale of potatoes. A producer member of a commission must have paid  
3 an assessment on potatoes adopted by the commission or its predecessor  
4 commission in each of the preceding three calendar years. The  
5 qualifications of producer members of the commission must continue  
6 during their term of office.

7 (b) Members appointed to positions 10, 11, 12, 13, and 14 by the  
8 elected producers shall be either Washington potato producers,  
9 handlers, or others active in matters directly relating to Washington  
10 state potatoes and have a demonstrated record of service in the potato  
11 industry in Washington state. The appointed members of the commission  
12 shall be elected by a majority of the elected commissioners.

13 (6) The term of office of the commission members is three years  
14 from the date of their election or appointment and until their  
15 successors are elected and qualified.

16 (7) Nomination and election of commission members is as provided  
17 for in this subsection (7).

18 (a) Not earlier than March 18th and not later than April 2nd of  
19 each year, the director shall give notice by mail to all producers in  
20 a district where a vacancy will occur, of such vacancy or such  
21 vacancies and call for nominations. Nominating petitions shall be  
22 signed by five persons qualified to vote for candidates. The notice  
23 shall state the final date for filing petitions, which shall be not  
24 earlier than April 7th and not later than April 12th of each year.

25 (b) The director shall mail ballots to all affected producers in  
26 the district in which the vacancy will occur not earlier than April  
27 17th and not later than May 2nd of each year. Ballots shall be  
28 postmarked not later than June 1st of that year. The mailed ballot  
29 shall be conducted in a manner so that it shall be a secret ballot in  
30 accordance with rules adopted by the director. An affected producer is  
31 entitled to one vote.

32 (8) The members of the commission not elected by the producers  
33 shall be elected by a majority of the commission within ninety days  
34 before the expiration of the member's term.

35 (9)(a) To fill a vacancy caused by the failure to qualify of a  
36 person elected by the producers as a member of the commission, or in  
37 the event of the death, removal, resignation, or disqualification of  
38 any elected member, the director shall call for nominations and give

1 notice by mail to all producers in the district where the vacancy  
2 occurred. A valid nominating petition must be signed by at least five  
3 persons qualified to vote for the nominated candidate and must be  
4 returned to the director. The notice shall state the final date for  
5 filing a nomination petition. If more than one valid nomination is  
6 submitted, the director shall conduct an election and mail ballots to  
7 all producers in the district where the vacancy occurred.

8 (b) To fill vacancies caused by reasons other than the expiration  
9 of an appointed term, the new commission members shall be elected by  
10 the commission at its first or second meeting after the occurrence of  
11 the vacancy.

12 (c) In the event that a nomination process for the beginning of a  
13 term of an elected member concludes with no candidate, a new member  
14 shall be appointed by the commission. The appointment shall be made at  
15 the commission's first or second meeting after the expiration of the  
16 previous term.

17 NEW SECTION. **Sec. 4.** The commission may:

- 18 (1) Administer, enforce, and implement this chapter;
- 19 (2) Elect a chair and such other officers as the commission may  
20 deem advisable and select subcommittees of commission members;
- 21 (3) Employ and discharge at its discretion an executive director,  
22 additional personnel, attorneys, consultants, research agencies, and  
23 other persons and firms that it may deem appropriate, and compensate  
24 its employees;
- 25 (4) Acquire personal property and lease office space and other  
26 necessary real property and transfer and convey the same;
- 27 (5) Institute and maintain in its own name any and all legal  
28 actions, including actions by injunction, mandatory injunction, or  
29 civil recovery, or proceedings before administrative tribunals or other  
30 governmental authorities necessary to implement this chapter;
- 31 (6) Keep accurate records of all its receipts and disbursements,  
32 which records shall be open to inspection, and make annual reports  
33 therefrom to the state auditor;
- 34 (7) Borrow money and incur indebtedness;
- 35 (8) Make necessary disbursements for routine operating expenses;
- 36 (9) Collect the assessments of producers as provided in this

1 chapter and expend the same in accordance with and to effectuate the  
2 purposes of this chapter;

3 (10) To prepare a budget or budgets covering anticipated income and  
4 expenses to be incurred in carrying out the provisions of this chapter  
5 during each fiscal year;

6 (11) Accept and receive gifts and grants from private persons or  
7 private and public agencies and expend the same to effectuate the  
8 purposes of this chapter;

9 (12) Work cooperatively with other local, state, and federal  
10 agencies; universities; and national organizations for the purposes of  
11 this chapter;

12 (13) Enter into contracts or interagency agreements with any  
13 private or public agency, whether federal, state, or local, to carry  
14 out the purposes of this chapter; however, personal service contracts  
15 must comply with chapter 39.29 RCW;

16 (14) Enter into contracts or agreements for research and education  
17 in the production, irrigation, processing, transportation, use,  
18 distribution, and trade barriers impacting potatoes and potato  
19 products;

20 (15) Retain in emergent situations the services of private legal  
21 counsel to conduct legal actions on behalf of the commission;

22 (16) Participate in international, federal, state, and local  
23 hearings, meetings, and other proceedings relating to the production,  
24 irrigation, manufacture, regulation, transportation, trade,  
25 distribution, sale, or use of potatoes as requested by any elected  
26 official or officer or employee of any agency and as authorized under  
27 RCW 42.17.190, including the reporting of those activities to the  
28 public disclosure commission;

29 (17) Assist and cooperate with the department or any other local,  
30 state, or federal government agency in the investigation and control of  
31 exotic pests and diseases that could damage or affect trade and export  
32 of potatoes;

33 (18) Acquire or own intellectual property rights, licenses, or  
34 patents and collect royalties resulting from commission-funded research  
35 related to potatoes;

36 (19) Engage in appropriate fund-raising activities for the purpose  
37 of supporting activities of the commission authorized by this chapter;

1 (20) Establish a foundation using commission funds as grant money  
2 for the purposes established in this chapter;

3 (21) Maintain a list of the names and addresses of affected  
4 producers that may be compiled from information used to collect  
5 assessments under this chapter and data on the value of each producer's  
6 production under this chapter. This list may be compiled from  
7 information used to collect producer assessments for a three-year  
8 period;

9 (22) Maintain a list of the names and addresses of persons who  
10 handle potatoes within the affected area and data on the amount and  
11 value of the potatoes handled by each person under this chapter for a  
12 minimum three-year period;

13 (23) Check records of producers or handlers of potatoes during  
14 normal business hours to determine whether the appropriate assessment  
15 has been paid; and

16 (24) Exercise such other powers and perform such other duties as  
17 are necessary and proper to effectuate the purposes of this chapter.

18 NEW SECTION. **Sec. 5.** (1) The commission shall by resolution  
19 establish a headquarters, which shall continue as the headquarters  
20 until changed by the commission, where the books, records, and minutes  
21 of the commission meetings shall be kept.

22 (2) Any action taken by the commission requires the majority vote  
23 of the members present, and a quorum must be present.

24 (3) A quorum of the commission consists of at least nine members.

25 (4)(a) Members of the commission shall be compensated in accordance  
26 with RCW 43.03.230. Members and employees of the commission shall  
27 receive travel expenses in accordance with RCW 43.03.050 and 43.03.060  
28 for each day spent in actual attendance at or traveling to and from  
29 meetings of the commission or on special assignments for the  
30 commission.

31 (b) Members and employees may be reimbursed for actual travel  
32 expenses incurred in carrying out this chapter as provided by rules  
33 adopted by the commission. In developing these rules, the commission  
34 shall review the special allowances for foreign travel and other travel  
35 involving higher than usual costs for subsistence and lodging adopted  
36 by the office of financial management as provided in RCW 43.03.050(1).

1 (5) In addition to notice of meetings of the commission as required  
2 by the open public meetings act, chapter 42.30 RCW, notice of the  
3 meetings shall also be published in the commission newsletter and sent  
4 to appropriate general and agricultural media outlets.

5 NEW SECTION. **Sec. 6.** Obligations incurred by the commission and  
6 any other liabilities or claims against the commission may be enforced  
7 only against the assets of the commission in the same manner as if it  
8 were a corporation. No liability for the debts or actions of the  
9 commission exist against either the state of Washington or any  
10 subdivision or instrumentality thereof or the assets thereof or against  
11 any member officer, employee, or agent of the commission in his or her  
12 individual capacity. The members of the commission, including  
13 employees thereof, may not be held responsible individually in any way  
14 whatsoever to any person for errors in judgment, mistakes, or other  
15 acts, either of commission or omission, as principal agent, person, or  
16 employee, except for their own individual acts of dishonesty or crime.  
17 No such person or employee may be held responsible individually for any  
18 act or omission of any other member of the commission. Liability of  
19 the members of the commission is several and not joint and no member is  
20 liable for the default of any other member.

21 NEW SECTION. **Sec. 7.** The purpose of this chapter is to promote  
22 the general welfare of the state and maintain and protect existing  
23 markets, increase production efficiency, ensure a fair regulatory  
24 environment, and increase use and consumption of potatoes produced in  
25 Washington. The commission shall conduct the programs in this section  
26 in accordance with this chapter.

27 (1) The commission may investigate and take necessary action to  
28 prevent or eliminate unfair trade and regulatory barriers and practices  
29 and correct, where possible, trade and regulatory barriers and  
30 practices that hinder the sale, production, transport, and export of  
31 Washington-produced potatoes or potato products. If the commission  
32 finds as a result of the investigation that trade, regulatory, or  
33 transportation barriers are restricting the free flow of potatoes  
34 produced in this state, the commission may institute appropriate action  
35 before any agency or body deemed necessary to correct the situation.

1 Information acquired in an investigation is confidential and may be  
2 released only to the extent necessary to effectuate the purposes of  
3 this chapter, including but not limited to information regarding:

4 (a) The prevention, modification, or elimination of trade and  
5 regulatory barriers that restrict or inhibit the production, transport,  
6 consumption, export, or sale of potatoes produced in this state;

7 (b) Presentation of technical information or facts to and  
8 negotiations with state, federal, or foreign governmental agencies on  
9 matters that affect the production, irrigation, transport, use,  
10 consumption, export, or sale of potatoes grown in this state, including  
11 cooperation with any agency or group in efforts to increase consumption  
12 or use of potatoes, and such other activities and programs that are  
13 consistent with the objectives of this chapter; and

14 (c) Investigating transportation rates and service costs.

15 (2)(a) The commission, subject to the provisions of this chapter,  
16 may carry on or cause to be carried on any necessary and proper  
17 production, irrigation, processing, transportation, export, handling,  
18 or use of research or survey studies relating to potatoes and may  
19 expend moneys for those purposes.

20 (b) The commission may engage in research and survey studies  
21 including, but not limited to:

22 (i) Production problems, such as those associated with soil, seed,  
23 and crop protection tools;

24 (ii) Developing and testing new potato cultivars with improved  
25 disease-resistance, processing, nutritional, or horticultural  
26 characteristics;

27 (iii) Improving techniques and methods of harvesting potatoes;

28 (iv) Developing and improving methods of processing potatoes and  
29 potato by-products for the purpose of increasing and expanding their  
30 use for food and industrial purposes;

31 (v) Improving packing and handling techniques that promote more  
32 efficient operation in the transport, trade, and distribution of  
33 potatoes;

34 (vi) Determining any special nutritive, nutraceutical, or  
35 pharmaceutical qualities of potatoes produced in Washington; and

36 (vii) Conducting surveys and other research regarding production  
37 practices, resource requirements and availability, and any other issues

1 or matters that may impact the continued production of potatoes in  
2 Washington.

3 (c) The commission may, in addition to the activities in (b) of  
4 this subsection, engage in any other proper and necessary research and  
5 survey programs and activities consistent with and subject to the  
6 limitations of this chapter. The research and survey studies may  
7 include the collection of data and information relating to potatoes;  
8 the analysis of the data and information; the dissemination of the  
9 data, information, and analysis; and other investigation that falls  
10 within the scope of the production, irrigation, use, processing,  
11 transportation, or handling of potatoes.

12 (d) The commission, subject to this chapter, may coordinate the  
13 state's potato crop protection chemical registrations and integrated  
14 pest management implementation.

15 (3)(a) The commission may adopt rules, in accordance with chapter  
16 34.05 RCW, to define, establish, and provide labeling requirements for  
17 improving standards and grades for potatoes and may expend moneys for  
18 such purposes.

19 (b) The commission shall give reasonable written notice to all  
20 producers, handlers, and persons directly affected by the labeling  
21 requirements issued under this section, in accordance with rule-making  
22 proceedings conducted under chapter 34.05 RCW.

23 (c) The commission may cooperate with state and federal agencies or  
24 departments responsible for revising and modernizing grades and  
25 standards and labeling of potatoes.

26 (d) This section does not authorize the commission to set minimum  
27 grades, sizes, or maturity of potatoes that a producer may sell, offer  
28 for sale, or ship.

29 (4) The commission may conduct programs for the purpose of  
30 providing factual and accurate information and education to the public  
31 including:

32 (a) The economic, environmental, and nutritional value and benefits  
33 of potatoes and the Washington potato industry;

34 (b) The quality, care, and methods used in the production of  
35 Washington potatoes;

36 (c) The handling, preparation, and use of Washington potatoes and  
37 potato products; and

1 (d) The effects of trade, transportation, and regulatory barriers  
2 on the Washington potato industry.

3 (5) The commission may conduct programs for the purpose of  
4 providing information and education to the Washington potato industry  
5 including:

6 (a) Public opinion or awareness research information for producers  
7 of potatoes;

8 (b) Industry-related education and training; and

9 (c) Information and services enabling producers to meet resource  
10 conservation objectives and keep current with issues impacting their  
11 business.

12 (6) The commission may, subject to this chapter, provide  
13 information and communicate on matters pertaining to the production,  
14 irrigation, processing, transportation, trade, or uses of potatoes  
15 produced in Washington state, as requested by any elected official or  
16 officer or employee of any agency.

17 NEW SECTION. **Sec. 8.** (1) An assessment shall be levied and  
18 collected by the commission of four cents per hundredweight upon all  
19 potatoes sold, processed, delivered for sale or processing by a  
20 producer, or stored or delivered for storage when storage or delivery  
21 for storage is outside the state. The assessment may be decreased or  
22 increased at any time subject to a referendum approved by affected  
23 potato producers in accordance with this chapter. The assessment shall  
24 be paid by the producer. No assessment may be collected on:

25 (a) Potatoes grown and sold for seed under an established seed  
26 certification program;

27 (b) Potatoes sold for livestock feed, regardless of grade;

28 (c) Potatoes sold for nonfood products, such as industrial starch;

29 (d) Potatoes of a producer's own production used by the producer on  
30 the producer's own premises for seed, feed, or personal consumption;

31 (e) Potatoes donated or shipped for relief or charitable purposes;  
32 or

33 (f) Potatoes sold by a producer whose production is less than five  
34 hundred pounds per year.

35 (2)(a) All assessments made and levied under this chapter apply to  
36 the respective producer who is primarily liable therefor.

1 (i) Handlers receiving potatoes from the producer, including, but  
2 not limited to, warehousemen, shippers, and processors that collect  
3 assessments from producers whose production they handle, shall pay  
4 assessments collected to the commission on or before the twentieth day  
5 of the succeeding month for the previous month's collections. On a  
6 monthly basis, each handler shall file with the commission a return  
7 under oath on forms to be furnished by the commission, stating the  
8 quantity of potatoes handled, processed, delivered, or shipped during  
9 the period prescribed by the commission.

10 (ii) Any person, producer, or handler subject to the payment of  
11 assessments shall give adequate assurance or security concerning the  
12 payments to the commission.

13 (b) On or before the beginning of each fiscal year, the commission  
14 shall give reasonable notice to all producers, handlers, and other  
15 affected persons of the method or methods of collection to be used for  
16 that fiscal year on field run or ungraded potatoes.

17 (c) No affected units of potatoes may be transported, carried,  
18 shipped, sold, stored, or otherwise handled or disposed of until every  
19 due and payable assessment under this chapter has been paid and the  
20 receipt issued or stamp canceled. No liability under this chapter  
21 attaches to common carriers in the regular course of their business.  
22 When any potatoes for which an exemption as provided in subsection (1)  
23 of this section is claimed are shipped either by railroad or truck, the  
24 reasons for the exemption shall be plainly noted on the bill of lading,  
25 shipping document, container, or invoice.

26 (d) Any producer or handler who fails to comply with this  
27 subsection is guilty of violating this chapter and is subject to the  
28 penalty, collection, and liability provisions of this chapter.

29 (3)(a) Moneys collected by the commission under this chapter as  
30 assessments shall be used by the commission only for the purposes of  
31 paying for the costs or expenses arising in connection with carrying  
32 out the purposes and provisions of this chapter.

33 (b) At the end of each fiscal year the commission shall credit each  
34 producer with any amount paid by the producer in excess of three  
35 percent of the total market value of all potatoes sold, processed, or  
36 delivered for sale or processing during that period. Refunds may be  
37 made only upon satisfactory proof given by the producer, which may  
38 include bills of lading, bills of sale, or receipts.

1        NEW SECTION.    **Sec. 9.** Assessments shall be levied upon potatoes  
2 sold on a field run or ungraded basis as provided in this section.

3        (1) If payment to the grower for the potatoes is based upon the  
4 gross weight of potatoes sold and not upon the yield of any particular  
5 grade of potatoes as determined by any type of sorting or inspection,  
6 then the assessment is made on ninety percent of the gross  
7 hundredweight of potatoes so sold.

8        (2) If payment to the grower for the potatoes is based upon the net  
9 weight of potatoes intended for human consumption derived from the  
10 potatoes so sold as determined by any type of sorting or inspection,  
11 then the assessment is made on the total net weight of potatoes  
12 intended for human consumption.

13        NEW SECTION.    **Sec. 10.** This section establishes the procedure for  
14 reporting and paying assessments levied under this chapter.  
15 Assessments shall be paid in accordance with one or more of the  
16 following methods as prescribed by the commission, in its discretion,  
17 for each affected producer or handler:

18        (1) By means of collection from producers by handlers, including  
19 warehousemen, packers, and processors receiving potatoes from  
20 producers, at the time the potatoes are first handled, and payment of  
21 assessments by those handlers to the commission:

22        (a) The commission shall bill each handler at such intervals, at  
23 least monthly, as the commission may from time to time determine, for  
24 the assessments due upon potatoes handled in the preceding period for  
25 which billing has not previously been made, and upon which assessments  
26 have not been paid, computed on the basis of the quantity of potatoes  
27 so handled as recorded on potato shipping pertaining to each handler  
28 prepared by the department on behalf of the commission, and filed with  
29 the commission, or with respect to handlers who are packers or  
30 processors, on the basis of the quantity of potatoes so handled as  
31 recorded on potato shipping records pertaining to such packer or  
32 processor prepared by such processor and filed with the commission;

33        (b) As used in (a) of this subsection, "handler" is the person,  
34 firm, or corporation designated as shipper on the potato shipping  
35 record form;

36        (c) In the event potatoes subject to assessment are handled by  
37 processors or other handlers under circumstances in which no potato

1 shipping record is filed with the commission, with respect to the  
2 potatoes so handled the handler shall, at the time of submitting the  
3 report required by (d) of this subsection, pay in full the assessment  
4 on the potatoes so reported;

5 (d) Each handler shall file a monthly report, under oath, on forms  
6 provided by the commission, showing the name and address of the handler  
7 making the report, the quantity of potatoes handled during the  
8 preceding calendar month, the name, address, handler's lot number, and  
9 quantity of potatoes handled, for each respective producer, and the  
10 representative district in which the potatoes were grown. The report  
11 shall be filed with the commission not later than the twentieth day of  
12 the month following that in which the potatoes were handled; or

13 (2) By means of payment in cash by the producer or handler, as  
14 determined by the commission in each respective instance, before the  
15 time the potatoes are shipped in either interstate or intrastate  
16 commerce.

17 NEW SECTION. **Sec. 11.** Any due and payable assessment levied under  
18 this chapter, and every sum due in a specified amount under this  
19 chapter constitutes a personal debt of every person so assessed or who  
20 otherwise owes the same, and the amount is due and payable to the  
21 commission when payment is called for by the commission. In the event  
22 that any assessment is not paid within ninety days after the date of  
23 the billing by the commission, or within ninety days after the due date  
24 of the report required by this chapter, a sum equal to ten percent of  
25 the unpaid assessment or unpaid portion thereof shall be added to the  
26 original amount and is due and owing to the commission. In the event  
27 of failure of a person or persons to pay any such due and payable  
28 assessment or other sum, the commission may bring a civil action  
29 against the person or persons in a state court of competent  
30 jurisdiction for the collection thereof, together with the additional  
31 ten percent as provided in this section, and the action shall be tried  
32 and judgment rendered as in any other cause of action for debt due and  
33 payable.

34 NEW SECTION. **Sec. 12.** (1)(a) Any handler handling potatoes for  
35 fresh market who has not established a record of prompt payment of

1 assessments due on fresh market potatoes in accordance with this  
2 chapter must prepay the assessments due the commission.

3 (b) The amount of prepayment shall be determined on the estimated  
4 basis of the potatoes the handler will handle during the first thirty  
5 days of the potato shipping season, or if the handler has shipped in  
6 the immediately prior potato shipping season, the prepayment shall be  
7 based on the highest thirty-day assessment due the commission during  
8 that shipping season. Prepayment shall not exceed twenty-five percent  
9 of the total estimated annual assessment payable by the handler.

10 (2) Any handler who has established a record of prompt payment  
11 during the entire previous potato shipping season and continues to  
12 maintain a record of prompt payment is not subject to the prepayment  
13 requirements in subsection (1) of this section.

14 NEW SECTION. **Sec. 13.** The commission shall notify the department  
15 in writing of any handler who has not established a record of prompt  
16 payment as set forth in this chapter, and that handler is subject to  
17 this section. No affected units of potatoes shall be transported,  
18 carried, shipped, sold, stored or otherwise handled or disposed of  
19 until every due and payable assessment herein provided for has been  
20 paid and the receipt issued, but no liability hereunder shall attach to  
21 common carriers in the regular course of their business. When any  
22 potatoes for which exemption as provided in this chapter is claimed are  
23 shipped either by railroad or truck, there shall be plainly noted on  
24 the bill of lading, shipping document, container or invoice, the  
25 reasons for such exemptions.

26 NEW SECTION. **Sec. 14.** (1) Commission expenditures for  
27 agricultural development or trade promotion and promotional hosting  
28 shall be pursuant to specific budget items as approved by the  
29 commission at annual public hearings on the commission budget.

30 (2) Individual commissioners and commission staff shall make  
31 agricultural development or trade promotion and promotional hosting  
32 expenditures, or seek reimbursements for those expenditures, only in  
33 those instances where the expenditures have been approved by the  
34 commission.

35 (3) All payments and reimbursements shall be as identified and

1 supported by vouchers to which receipts are attached. Voucher forms  
2 will be supplied by the commission, and require the following  
3 information:

4 (a) Name and position of each person hosted, however in the case of  
5 a group of twenty-five or more persons, then only the name of the group  
6 hosting shall be required;

7 (b) General purpose of the hosting;

8 (c) Date of hosting;

9 (d) To whom payment was or will be made; and

10 (e) Signature of person seeking payment or reimbursement;

11 (4) The chair of the commission, the executive director of the  
12 commission, or assistant executive director of the commission may  
13 approve direct payment or reimbursements submitted in accordance with  
14 this section.

15 (5) The following persons may be hosted when it is reasonably  
16 believed such hosting will promote trade for the Washington state  
17 potato industry, as long as the hosting does not violate federal or  
18 state conflict of interest laws:

19 (a) Individuals from private business and accompanying interpreter  
20 or interpreters;

21 (b) Foreign government officials and accompanying interpreter or  
22 interpreters;

23 (c) Federal, state, and local officials, however lodging, meals,  
24 and transportation may not be provided when those officials may obtain  
25 reimbursement for these expenses from their government employer;

26 (d) The general public, at meetings and gatherings open to the  
27 general public;

28 (e) Commissioners and employees of the commission when their  
29 attendance at meetings, meals, and gatherings at which the persons  
30 described in (a) through (d) of this subsection are being hosted will  
31 promote trade for the Washington state potato industry.

32 NEW SECTION. **Sec. 15.** (1) It is a misdemeanor for:

33 (a) Any person willfully to violate any provision of this chapter;

34 (b) Any person willfully to render or furnish a false or fraudulent  
35 report, statement of record required by the commission under this  
36 chapter, or any rule of the commission or rule of the department

1 adopted under this chapter, or willfully to fail or refuse to furnish  
2 or render any such report, statement, or record so required.

3 (2) In the event of violation or threatened violation of any  
4 provision of this chapter or any rule of the commission or rule of the  
5 department adopted under this chapter, the commission is entitled to an  
6 injunction to prevent further violation and to a decree of specific  
7 performance of such rules, and to a temporary restraining order and  
8 injunction pending litigation upon filing a verified complaint and  
9 sufficient bond.

10 (3) All persons subject to this chapter shall severally from time  
11 to time, upon the request of the commission, furnish the commission  
12 with such information necessary to effectuate the policies of this  
13 chapter or to ascertain and determine the extent to which this chapter  
14 has been carried out or has effectuated such policies and purposes, or  
15 to determine whether or not there has been any abuse of the privilege  
16 of exemptions from laws relating to trusts, monopolies, and restraints  
17 of trade. Such information shall be furnished in accordance with forms  
18 and reports to be prescribed by the commission. For the purpose of  
19 ascertaining the correctness of any report made to the commission under  
20 this section or for the purpose of obtaining the information required  
21 in any such report where it has been requested and has not been  
22 furnished, the commission is authorized to examine such books, papers,  
23 records, copies of tax reports, accounts, correspondence, contracts,  
24 documents, or memoranda as the commission deems relevant and that are  
25 within the control of any such person from whom such report was  
26 requested, or of any person having, either directly or indirectly,  
27 actual or legal control of or over such person or such records, or of  
28 any subsidiary of any such person. To carry out the purposes of this  
29 section, the commission, upon giving due notice, may hold hearings,  
30 take testimony, administer oaths, subpoena witnesses, and issue  
31 subpoenas for the production of books, records, documents, or other  
32 writings of any kind, and shall apply with respect to any such hearing,  
33 together with such other rules consistent therewith as the commission  
34 may from time to time prescribe.

35 NEW SECTION. **Sec. 16.** Moneys collected by the commission under  
36 this chapter from any assessment or as an advance deposit thereon shall

1 be used by the commission only for the purpose of paying for the costs  
2 or expenses arising in connection with carrying out the purposes and  
3 provisions of this chapter.

4 If the commission is ever terminated any and all moneys remaining  
5 with the commission operating under this chapter and not required to  
6 defray expenses or repay obligations incurred by that commission shall  
7 be returned to the affected producers in proportion to the assessments  
8 paid by each in the two-year period preceding the date of the  
9 termination.

10 NEW SECTION. **Sec. 17.** If after complying with the procedures  
11 outlined in this chapter and a referendum proposal to terminate the  
12 commission is assented to, the commission shall:

13 (1) Document the details of all measures undertaken to terminate  
14 the commission and identify and document all closing costs;

15 (2) Contact the office of the state auditor and arrange for a final  
16 audit of the commission. Payment for the audit shall be from  
17 commission funds and identified in the budget for closing costs;

18 (3) Provide for the reimbursement to affected producers of moneys  
19 collected by assessment. Reimbursement shall be made to those  
20 considered affected producers over the previous three-year time frame  
21 on a pro rata basis and at a percent commensurate with their volume of  
22 production over the previous three-year period. If the commission  
23 finds that the amounts of moneys are so small as to make impractical  
24 the computation and remitting of the pro rata refund, the moneys shall  
25 be paid into the state treasury as unclaimed trust moneys; and

26 (4) Transfer all remaining files to the department for storage and  
27 archiving, as appropriate.

28 NEW SECTION. **Sec. 18.** Any due and payable assessment levied under  
29 this chapter, and every sum due under this chapter in a specified  
30 amount constitutes a personal debt of every person so assessed or who  
31 otherwise owes the same, and the same shall be due and payable to the  
32 commission when payment is called for by the commission. In the event  
33 any person fails to pay the full amount of the assessment or such other  
34 sum on or before the date due, the commission may add to the unpaid  
35 assessment or sum an amount not exceeding ten percent of the same to  
36 defray the cost of enforcing collection of it. In the event of failure

1 of such person or persons to pay any such due and payable assessment or  
2 other such sum, the commission may bring a civil action against such  
3 person or persons in a state court of competent jurisdiction for the  
4 collection thereof, together with the above specified ten percent  
5 thereon, and such action shall be tried and judgment rendered as in any  
6 other cause of action for debt due and payable.

7 NEW SECTION. **Sec. 19.** All moneys that are collected or otherwise  
8 received under this chapter shall be used solely by and for the  
9 commission and shall not be used for any other commission, nor the  
10 department except as otherwise provided in this chapter. Such moneys  
11 shall be deposited in a separate account or accounts in the name of the  
12 commission in any bank that is a state depository. All expenses and  
13 disbursements incurred and made under the provisions of this chapter  
14 shall be paid from moneys collected and received under this chapter  
15 without the necessity of a specific legislative appropriation and all  
16 moneys shall be paid from the account by check or voucher in such form  
17 and in such manner and upon the signature of such person as may be  
18 prescribed by the commission. The provisions of RCW 43.01.050 do not  
19 apply to any such account or any moneys so received, collected, or  
20 expended.

21 NEW SECTION. **Sec. 20.** (1) Any funds of the commission may be  
22 invested in savings or time deposits in a public depository as defined  
23 in RCW 39.58.010.

24 (2) This section applies to all funds that may be lawfully so  
25 invested, that in the judgment of the commission are not required for  
26 immediate expenditure. The authority granted by this section is not  
27 exclusive and shall be construed to be cumulative and in addition to  
28 other authority provided by law for the investment of such funds,  
29 including, but not limited to, authority granted under chapters 39.58,  
30 39.59, and 43.84 RCW.

31 NEW SECTION. **Sec. 21.** Every administrator, employee, or other  
32 person occupying a position of trust with the commission and every  
33 member actually handling or drawing upon funds shall give a bond in  
34 such penal amount as may be required by the commission, the premium for  
35 which bond or bonds shall be paid by the commission.

1        NEW SECTION.    **Sec. 22.** (1) Pursuant to RCW 42.17.31907, certain  
2 agricultural business records, commodity commission records, and  
3 department of agriculture records relating to commodity commissions and  
4 producers of agricultural commodities are exempt from public  
5 disclosure.

6        (2) Financial and commercial information and records submitted to  
7 either the department or the commission for the purpose of  
8 administering this chapter may be shared between the department and the  
9 commission. They may also be used, if required, in any suit or  
10 administrative hearing involving any provision of this chapter.

11        (3) This chapter does not prohibit:

12        (a) The issuance of general statements based upon the reports of a  
13 number of persons subject to this chapter as long as the statements do  
14 not identify the information furnished by any person; or

15        (b) The publication by the commission of the name of any person  
16 violating this chapter and a statement of the manner of the violation  
17 by that person.

18        NEW SECTION.    **Sec. 23.** (1) The commission shall prepare a list of  
19 all affected producers from any information available from the  
20 department, producers, producer associations, organizations, or  
21 handlers of potatoes. This list shall contain the names and addresses  
22 of all affected persons who produce the potatoes and the amount, by  
23 unit, of the potatoes produced during at least the past three years.

24        (2) The commission shall prepare a list of all persons who handle  
25 potatoes and the amount of potatoes handled by each person during at  
26 least the past three years.

27        (3) It is the responsibility of all affected parties to ensure that  
28 their correct address is filed with the commission. It is also the  
29 responsibility of affected parties to submit production data and  
30 handling data to the commission as prescribed by the commission's rules  
31 or policies.

32        (4) Any qualified person may, at any time, have his or her name  
33 placed upon any list for which he or she qualifies by delivering or  
34 mailing the information to the commission. The lists shall be  
35 corrected and brought up-to-date in accordance with evidence and  
36 information provided to the commission.

1 (5) The commission shall maintain a certified list of affected  
2 producers or affected handlers from its records. The list shall  
3 contain all information required to conduct a referendum or commission  
4 member elections under this chapter.

5 (6) For all purposes of giving notice and holding referenda on  
6 amendment or termination proposals, and for giving notice and electing  
7 or selecting members of the commission, the applicable list corrected  
8 up to the day preceding the date the list is certified by the  
9 commission is deemed to be the list of all affected producers or  
10 affected handlers, as applicable, entitled to notice or to vote.  
11 Inadvertent failure to notify an affected producer or handler does not  
12 invalidate a proceeding conducted under this chapter.

13 NEW SECTION. **Sec. 24.** Any member of a commission may also be a  
14 member or officer of an association that has the same objectives for  
15 which the commission was formed. The commission may also contract with  
16 such association for services necessary to carry out any purposes  
17 authorized under this chapter, if an appropriate contract has been  
18 entered into.

19 NEW SECTION. **Sec. 25.** Nothing in this chapter permits the fixing  
20 of prices not otherwise permitted by law or any limitation on  
21 production and no agreement or any rule thereunder may contain any such  
22 provisions.

23 NEW SECTION. **Sec. 26.** (1) Upon completion of any vote,  
24 referendum, or nomination and elections, the director shall tally the  
25 results of the vote and provide the results to affected parties.

26 (2) If an affected party disputes the results of a vote, that  
27 affected party, within sixty days from the announced results, shall  
28 provide in writing a statement of why the vote is disputed and request  
29 a recount.

30 (3) Once the vote is tallied and distributed, all disputes are  
31 resolved, and all matters in a vote are finalized, the individual  
32 ballots may be destroyed.

33 NEW SECTION. **Sec. 27.** The members of the commission may, subject

1 to approval by two-thirds of the voting members of the commission,  
2 suspend for a period not exceeding one crop-year at a time all or part  
3 of the assessments on potatoes subject to this chapter.

4 NEW SECTION. **Sec. 28.** The director may adopt rules necessary to  
5 carry out the duties and responsibilities under this chapter including,  
6 but not limited to:

7 (1) The issuance, amendment, suspension, or termination of rules  
8 associated with this chapter;

9 (2) Procedural, technical, or administrative rules that may address  
10 and include, but are not limited to:

11 (a) Nominations conducted under this chapter; and

12 (b) Elections of commission members or referenda conducted under  
13 this chapter.

14 NEW SECTION. **Sec. 29.** (1) The substance of a petition received  
15 under this chapter to amend or terminate commission programs or  
16 assessments shall be set out in detail and designated as the proposal.  
17 A copy of the proposal shall be mailed by the department to all  
18 affected parties or producers based on the list provided for under this  
19 chapter, as applicable, and shall be posted on the department's web  
20 site.

21 (2) Notice of a public hearing to amend or terminate the commission  
22 shall be published in the form of a legal notice for a period of two  
23 days in a newspaper of general circulation within the affected areas,  
24 as the director may prescribe. The notice must also be posted on the  
25 department's web site. The department shall mail a copy of the public  
26 hearing notice along with a copy of the proposal as provided in  
27 subsection (1) of this section to all affected parties or affected  
28 producers, as applicable, who may be directly affected by the proposal  
29 and whose names and addresses appear on the list compiled under this  
30 chapter. The mailing must include the department's web site address  
31 along with a description of the process for the amendment or  
32 termination of the commission, as applicable.

33 (3) At a public hearing, the director shall receive testimony  
34 offered in support of, or opposition to, the proposed amendment to or  
35 termination of the commission and concerning the terms, conditions,  
36 scope, and area thereof. The hearing shall be public and all testimony

1 shall be received under oath. A full and complete record of all  
2 proceedings at such hearings shall be made and maintained on file in  
3 the office of the director, which file shall be open to public  
4 inspection. The director shall base any findings upon the testimony  
5 received at the hearing, together with any other relevant facts  
6 available from official publications of institutions of recognized  
7 standing. The director shall describe in the findings such official  
8 publications upon which any finding is based.

9 (4) The director has the power to subpoena witnesses and to issue  
10 subpoenas for the production of any books, records, or documents of any  
11 kind.

12 (5) The superior court of the county in which any hearing or  
13 proceeding may be had may compel the attendance of witnesses and the  
14 production of records, papers, books, accounts, documents, and  
15 testimony as required by such subpoena. The director, in case of the  
16 refusal of any witness to attest or testify or produce any papers  
17 required by the subpoena, shall report to the superior court of the  
18 county in which the proceeding is pending by petition setting forth  
19 that due notice has been given of the time and place of attendance of  
20 the witness or the production of the papers and that the witness has  
21 been summoned in the manner prescribed in this chapter and that he or  
22 she has failed to attend or produce the papers required by the subpoena  
23 at the hearing, cause, or proceeding specified in the subpoena, or has  
24 refused to answer questions propounded to it in the course of such  
25 hearing, cause, or proceeding, and shall ask an order of the court to  
26 compel a witness to appear and testify before the director. The court,  
27 upon such petition, shall enter an order directing the witness to  
28 appear before the court at a time and place to be fixed in such order  
29 and then and there to show cause why he or she has not responded to the  
30 subpoena. A copy of the order shall be served upon the witness. If it  
31 appears to the court that the subpoena was regularly issued, it shall  
32 enter an order that the witness appear at the time and place fixed in  
33 the order and testify or produce the required papers, and on failing to  
34 obey the order, the witness shall be dealt with as for contempt of  
35 court.

36 NEW SECTION. **Sec. 30.** (1) The director shall make findings upon  
37 material points controverted at the hearing and required by this

1 chapter and upon such other matters and things as the director may deem  
2 fitting and proper. Based upon those findings, the director shall make  
3 conclusions and develop and issue a recommended decision. The  
4 findings, conclusions, and recommended decision, and the full text of  
5 the proposal shall be posted on the department's web site.

6 (2) The recommended decision may deny or approve the proposal in  
7 its entirety, or it may recommend a rule containing other or different  
8 terms or conditions from those contained in the proposal, however any  
9 such rule shall be of a kind or type substantially within the purview  
10 of the notice of hearing and shall be supported by evidence taken at  
11 the hearing or by documents of which the director is authorized to take  
12 official notice. The director shall not approve the amendment or  
13 termination unless he or she finds with respect thereto:

14 (a) That the proposed issuance, amendment, or termination thereof  
15 is reasonably calculated to attain the objective sought in a rule;

16 (b) That the proposed issuance, amendment, or termination is in  
17 conformity with this chapter and, within the applicable limitations and  
18 restrictions in this chapter, will tend to effectuate its declared  
19 purposes and policies; and

20 (c) That the interests of consumers of potatoes are protected in  
21 that the powers of this chapter are being exercised only to the extent  
22 necessary to attain such objectives.

23 (3) If the director's recommended decision does not make any  
24 changes to the proposal, notification will be made by mail in the form  
25 of a postcard reciting the recommended decision. The postcard must  
26 also include the department's web site address where any person can  
27 access the full text of the findings, conclusions, and recommended  
28 decision.

29 (4) If the director's recommended decision makes changes to the  
30 proposal or does not support the proposal, notification will be made by  
31 mail in the form of a letter describing the changes made or explaining  
32 the reason for not supporting the proposal and a referendum. The  
33 letter must also include the department's web site address where any  
34 person can access the full text of the findings, conclusions, and  
35 recommended decision.

36 (5) After the director issues his or her findings, conclusions, and  
37 recommended decision, all interested parties shall have a period of not  
38 less than fifteen days from the date of the mailing of the postcard or

1 letter to file statements with the director in support of or in  
2 opposition to the recommended decision. The director shall consider  
3 the additional statements and shall issue his or her final decision.  
4 The final decision may be the same as the recommended decision or may  
5 be revised in light of the additional information received in response  
6 to the recommended decision. The director shall notify affected  
7 parties of his or her final decision by mail in the form of a postcard.  
8 Notification shall include the department's web site address where any  
9 person can access the full text of the findings, conclusions, and final  
10 decision and the full text of the final proposal. If the final  
11 decision denies the proposal in its entirety, no further action may be  
12 taken by the director.

13 (6) Affected parties who do not have access to materials posted on  
14 the department's web site may request notification by fax or mail.

15 NEW SECTION. **Sec. 31.** After the director issues his or her final  
16 decision approving the amendment or termination, the director shall  
17 determine by a referendum whether the affected parties or producers  
18 assent to the proposed action or not. The director shall conduct the  
19 referendum among the affected parties or producers based on the list as  
20 provided for in this chapter, as applicable. The affected parties or  
21 producers shall be deemed to have assented to the proposed issuance or  
22 termination order if fifty-one percent or more by number reply to the  
23 referendum within the time specified by the director, and if, of those  
24 replying (a) sixty-five percent or more by number and fifty-one percent  
25 or more by volume assent to the proposed order; or (b) sixty percent or  
26 more by number and sixty percent or more by volume of those replying  
27 assent to the proposed order. The determination by volume shall be  
28 made on the basis of volume as determined in the list of affected  
29 producers created under this chapter, subject to rules of the director  
30 for such determination. Results of the referendum shall be mailed to  
31 all affected parties in the form of a postcard. If the requisite  
32 assent is given, the director shall adopt the order.

33 NEW SECTION. **Sec. 32.** (1) All rule-making proceedings conducted  
34 under this chapter shall be in accordance with chapter 34.05 RCW.

35 (2) Rule-making proceedings conducted under this chapter are exempt

1 from compliance with RCW 34.05.310, chapter 19.85 RCW, the regulatory  
2 fairness act, and RCW 43.135.055 when adoption of the rule is  
3 determined by a referendum vote of the affected parties.

4 (3) The commission may adopt amendments to rules associated with  
5 this chapter without conducting a referendum if the amendments are  
6 adopted under the following criteria:

7 (a) The proposed amendments relate only to internal administration  
8 of this chapter and are not subject to violation by a person;

9 (b) The proposed amendments adopt or incorporate by reference  
10 without material change federal statutes or regulations, Washington  
11 state statutes, or rules of other Washington state agencies, if the  
12 material adopted or incorporated regulates the same activities as are  
13 authorized under this chapter;

14 (c) The proposed amendments only correct typographical errors, make  
15 address or name changes, or clarify language of a rule in accordance  
16 with this chapter;

17 (d) The content of the proposed amendments is explicitly and  
18 specifically dictated by statute.

19 **Sec. 33.** RCW 15.66.270 and 1961 c 11 s 15.66.270 are each amended  
20 to read as follows:

21 Nothing in this chapter contained shall apply to:

22 (1) Any order, rule, or regulation issued or issuable by the  
23 Washington utilities and transportation commission or the interstate  
24 commerce commission with respect to the operation of common carriers;

25 (2) Any provision of the statutes of the state of Washington  
26 relating to the Washington apple (~~(advertising)~~) commission (chapter  
27 15.24 RCW), to the soft tree fruits commission (chapter 15.28 RCW)  
28 (~~(œ)~~), to the dairy products commission (chapter 15.44 RCW), or to the  
29 potato commission established in chapter 15.-- RCW (sections 1 through  
30 32 and 35 of this act). No marketing agreement or order shall be  
31 issued with respect to apples, soft tree fruits (~~(œ)~~), dairy products,  
32 or potatoes for human consumption, for the purposes specified in RCW  
33 15.66.030(1) or 15.66.030(2).

34 NEW SECTION. **Sec. 34.** (1) The potato commission established in  
35 chapter 16-516 WAC is hereby abolished and its powers, duties, and

1 functions are hereby transferred to the potato commission created in  
2 this act.

3 (2)(a) All reports, documents, surveys, books, records, files,  
4 papers, or written material in the possession of the potato commission  
5 established in chapter 16-516 WAC shall be transferred to the custody  
6 of the potato commission created by this act. All cabinets, furniture,  
7 office equipment, motor vehicles, and other tangible property employed  
8 by the potato commission established in chapter 16-516 WAC shall be  
9 made available to the potato commission created by this act. All  
10 funds, credits, or other assets held by the potato commission  
11 established in chapter 16-516 WAC shall be assigned to the potato  
12 commission created by this act.

13 (b) Any appropriations made to the potato commission established in  
14 chapter 16-516 WAC shall, on the effective date of this section, be  
15 transferred and credited to the potato commission created by this act.

16 (c) If any question arises as to the transfer of any personnel,  
17 funds, books, documents, records, papers, files, equipment, or other  
18 tangible property used or held in the exercise of the powers and the  
19 performance of the duties and functions transferred, the director of  
20 financial management shall make a determination as to the proper  
21 allocation and certify the same to the state agencies concerned.

22 (3) All employees of the potato commission established in chapter  
23 16-516 WAC are transferred to the jurisdiction of the potato commission  
24 created by this act. All members of the potato commission established  
25 in chapter 16-516 WAC shall continue as members of the potato  
26 commission established in chapter 16-516 WAC until their terms expire.

27 (4) All rules and all pending business before the potato commission  
28 established in chapter 16-516 WAC shall be continued and acted upon by  
29 the potato commission created by this act. All existing contracts and  
30 obligations shall remain in full force and shall be performed by the  
31 potato commission created by this act.

32 (5) The transfer of the powers, duties, functions, and personnel of  
33 the potato commission established in chapter 16-516 WAC shall not  
34 affect the validity of any act performed before the effective date of  
35 this section.

36 (6) If apportionments of budgeted funds are required because of the  
37 transfers directed by this section, the director of financial  
38 management shall certify the apportionments to the agencies affected,

1 the state auditor, and the state treasurer. Each of these shall make  
2 the appropriate transfer and adjustments in funds and appropriation  
3 accounts and equipment records in accordance with the certification.

4 (7) Nothing contained in this section may be construed to alter any  
5 existing collective bargaining unit or the provisions of any existing  
6 collective bargaining agreement until the agreement has expired or  
7 until the bargaining unit has been modified by action of the personnel  
8 resources board as provided by law.

9 NEW SECTION. **Sec. 35.** Potatoes that are certified as organically  
10 grown under chapter 15.86 RCW are exempt from assessments under this  
11 chapter if a separate commodity commission is formed to include  
12 organically grown potatoes.

13 NEW SECTION. **Sec. 36.** Sections 1 through 32 and 35 of this act  
14 constitute a new chapter in Title 15 RCW.

15 NEW SECTION. **Sec. 37.** This act takes effect July 1, 2006.

16 NEW SECTION. **Sec. 38.** If any section, subsection, sentence,  
17 clause, or part of this chapter is for any reason held to be invalid or  
18 unconstitutional, the judicial decision does not affect the remainder  
19 of the chapter and its application to other persons or circumstances.  
20 The legislature declares that each section, subsection, sentence,  
21 clause, and part of this chapter was enacted with the intent that if  
22 any portion of this chapter is severed, the remainder of the chapter is  
23 capable of accomplishing its legislative purpose."

**SHB 1608** - S COMM AMD

By Committee on Agriculture & Rural Economic Development

**ADOPTED 04/07/2005**

24 On page 1, line 1 of the title, after "commission;" strike the  
25 remainder of the title and insert "amending RCW 15.66.270; adding a new  
26 chapter to Title 15 RCW; creating new sections; and providing an

1 effective date."

--- END ---